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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 8 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

RISHIKESH APARTMENTS CO.OP HOUSING SOCEITY LTD.

Appearance:

MR AKIL QURESHI FOR MR MANISH R BHATT for Applicant.

MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 14/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 At the instance of the Revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench "A" has referred to this Court the following question for its opinion under the provisions of section 256(1) of the Income Tax Act,1961 (hereinafter referred to as 'the Act').

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the tax paid by the contractor in its own case by way of advance-tax and self-assessment tax should be deducted from the gross tax that the defaulter assessee should have deducted under section 194C in computing interest chargeable under sec.201(1A) of the Act?"

2. Mr.Akil Qureshi, learned Advocate has appeared for the applicant whereas Mr.Bhargav Karia has appeared for the respondent assessee. The facts giving rise to the present Reference in a nutshell are as under :

2.1. The assessee is a Co.operative Society who had entered into two contracts with M/s.Ravi Builder for construction of its building. From the amount which was to be paid by the assessee society to the contractor, the assessee did not deduct any amount of tax which it was required to deduct as per the provisions of section 194C of the Act. It is pertinent to note that though the assessee society did not deduct the amount of tax as per the provisions of section 194C of the Act, M/s.Ravi Builder, the contractor, had paid advance tax as well as tax on self assessment with respect to the amount received by it from the assessee society. As the assessee society had not deducted the tax at source, in the process of assessment of income of the assessee society for the assessment years 1974-75 to 1977-78, the Assessing Officer charged interest under the provisions of section 201(1A) of the Act, on the tax which was deductible by the assessee society from the amount which was paid to the contractor. It was the case of the assessee that though no tax was deducted from the amount payable to the contractor, the contractor had already paid tax and, therefore, interest under the provisions of section 201(1A) could not have been levied by the Revenue on the assessee but the said argument of the assessee did not find favour with the Assessing Officer.

2.2. Being aggrieved by the levy of interest, the assessee filed an appeal before the Appellate Assistant Commissioner of Income-tax. After hearing the assessee,

the Appellate Assistant Commissioner of Income-tax partly allowed the appeal, mainly on the ground that M/s.Ravi Builder had already paid advance tax on the amount which was paid to it by the assessee society. For two years i.e. for assessment years 1974-75 and 1975-76, sufficient advance tax and tax on self assessment was paid by M/s. Ravi Builder and, therefore, the AAC held that the levy of interest under the provisions of section 201(1A) was not justified for those two years. So far as the other two assessment years were concerned, the contractor had not paid sufficient advance tax and, therefore, the AAC came to the conclusion that as advance tax was not paid by M/s.Ravi Builder and as the Revenue had not received the amount of tax on due date, the action of the Assessing Officer with regard to levy of interest for the said years was justified. Thus, the appeal was partly allowed by the AAC.

3. Being aggrieved by the order passed in the appeal, the Revenue approached the Tribunal and the Tribunal upheld the order passed by the AAC. In the circumstances referred to hereinabove, the question which has been referred to this Court is whether the Tribunal was right in law in holding that the tax paid by M/s.Ravi Builder in its own case by way of advance tax and tax on self assessment should be deducted from the gross tax that the assessee society should have deducted u/s.194C while computing interest chargeable u/s.201(1A) of the Act.

4. We have heard Mr.Akil Qurehi, learned Advocate, appearing for the Revenue and Mr.Bhargav Karia, learned Advocate appearing for the respondent assessee.

5. Mr.Akil Qureshi, learned Advocate, appearing for the Revenue has submitted that as per the provisions of section 194C of the Act, the assessee was duty bound to deduct income-tax from the amount which the assessee had paid to M/s.Ravi Builder. As income-tax had not been deducted by the assessee society under the provisions of section 194C of the Act, the society had committed a default and as a result thereof, the amount of tax, which ought to have been paid to the Revenue was not paid and, therefore, the Assessing Officer had rightly levied the interest as per the provisions of section 201(1A) of the Act upon the assessee.

6. Mr.Qureshi, in support of his submissions, has relied upon a judgment delivered in the case of C.I.T. Vs. M/s.Darshan Trading and Finance Pvt.Ltd., reported in 1995 Tax L.R.1203, by this Court. In the said case,

no amount of tax was deducted under the provisions of section 194B of the Act and this Court held in the said case that the assessee was liable to pay interest u/s.201(1A) of the Act. Upon perusal of the facts of the said case, we are of the opinion that the facts of the said case and the case which is on hand are absolutely different. In the case of C.I.T. vs. M/s.Darshan Trading & Finance Pvt.Ltd., it was submitted by the assessee and it was also held by the Tribunal that the assessee was liable to pay interest from the date of default till the date of actual payment of tax but as the tax was not paid, the amount of interest chargeable under section 201(1A) could not have been quantified. This Court, in the said case did not approve the view expressed by the Tribunal and looking to the facts of the case, this Court opined that the assessee was liable to pay interest u/s.201(1A) of the Act.

7. On the other hand, Mr.Karia, learned Advocate appearing for the assessee has submitted that the assessee had to deduct tax from the amount payable to M/s.Ravi Builder and as M/s.Ravi Builder had admittedly discharged its liability with regard to payment of tax, no loss of whatsoever type had been caused to the Revenue. It was not proper on the part of the Revenue to levy any interest u/s.201(1A) of the Act on the assessee especially when the tax payable by M/s.Ravi Builder had already been paid to the revenue. As a matter of fact, as submitted by Mr. Karia and held by the AAC, much more amount of advance tax was paid by the contractor than what was payable by it for both the years in question. He has, therefore, submitted that the law as interpreted by the Tribunal is just and proper and, therefore, the Reference should be decided in favour of the assessee.

8. We have heard the learned Advocates at length and have also perused the relevant provisions and judgments cited by them.

9. If one looks at the provisions of the Act which pertain to imposition of tax, it is very clear that as per the provisions of section 4 of the Act, which is the charging section, the tax is to be paid on income of the assessee and as per the provisions of the Act, the said tax can also be deducted at source. The portion of the tax which was payable by M/s.Ravi Builder was to be paid by the assessee by deducting tax at source under the provisions of section 194C of the Act. When the assessee was supposed to deduct tax at source and pay the same to the Revenue, the assessee had to pay the same on behalf

of M/s.Ravi Builder, one who was in fact liable to pay the tax on the income which was earned from the amount which was paid by the assessee to M/s.Ravi Builder. According to the provisions of section 190 of the Act, in certain cases, as provided under Chapter XVII of the Act, the tax is to be paid by deduction at source. The said amount is to be deducted by way of tax from the person who has to make payment to the concerned person and as per the provisions of section 199 of the Act, whenever any person who deducts tax before making payment to another person and pays the same to the Central Government, he pays the tax which is payable by the payee of the said amount. Thus, the assessee was to pay an amount of tax on behalf of M/s. Ravi Builder by deducting the same from the amount payable to it under the provisions of section 194C of the Act.

10. If one looks at the fact whether M/s.Ravi Builder had in fact paid the amount of tax payable by it on the amount which was paid to it by the assessee, one finds that M/s.Ravi Builder had paid the tax. In fact for both the years, it had paid more advance tax than what was payable by it. Thus, the entire amount of tax which was payable by it had been duly paid. Had M/s.Ravi Builder not paid tax on the amount which it had received from the assessee, the Revenue could surely saddle the assessee with the liability of payment of interest under the provisions of Sec.201(1A) of the Act. But in the instant case, as M/s.Ravi Builder had already paid the tax on the income, in our opinion, there was no question of levying any interest on the assessee as the amount which was payable to the Revenue had been duly paid. In other words, we may say that the liability of the assessee society to make deduction at source and pay the tax to the Revenue is not independent of the liability of the contractor or M/s.Ravi Builder to pay the tax. If assessment in relation to income of M/s.Ravi Builder i.e. the contractor had become final and no further tax was found due from M/s.Ravi Builder, that would put the end to the liability of the assessee society and as the assessee society was not liable to make any payment of tax on behalf of the contractor, no amount of interest could be leviable under the provisions of section 201(1A) of the Act.

11 If one looks at the facts of the present case, it is not in dispute that M/s.Ravi Builder, on whose behalf the tax was to be deducted and paid u/s.194C of the Act had paid more amount of tax by way of advance tax than what was payable and had also paid tax on self assessment. Thus, it is not at all in dispute that for

the relevant two years the amount of tax was paid by M/s.Ravi Builder on its income as per the provisions of the Act, and for other two years, tax was paid by M/s.Ravi Builder little late. So far as the late payment is concerned, the AAC held that the assessee had to pay interest u/s.201A for the said years and the assessee accepted the said finding. Thus, it can very well be seen that the facts of the case which has been relied upon by Mr.Qureshi cannot help the Revenue for the reason that in the said case it was not known whether the person on whose behalf the tax was to be paid to the Revenue had in fact paid the tax payable by him. In the instant case the contractor viz. M/s.Ravi Builder had admittedly paid the amount of tax payable by it and thus no loss of whatsoever nature had been caused to the Revenue on account of non deduction of tax at source by the assessee.

12. From the legal provisions discussed hereinabove, it is crystal clear that in the instant case M/s.Ravi Builder, on whose behalf the tax was to be paid by the assessee, had duly paid its tax and was not required to pay any tax to the Revenue in respect of the income earned by it from the assessee. If the tax was duly paid and that too at the time when it had become due, it would not be proper on the part of the Revenue to levy any interest u/s.201(1A) of the Act especially when M/s.Ravi Builder had paid more amount of tax by way of advance tax than what was payable by it. As the amount of tax payable by the Contractor had already been paid by it and that too in excess of the amount which was payable by way of advance tax, in our opinion, the Tribunal was absolutely right in holding that the tax paid by the contractor in its own case, by way of advance tax and self assessment tax, should be deducted from the gross tax that the assessee should have deducted under section 194C of the Act while computing interest chargeable under section 201(1A) of the Act. If the Revenue is permitted to levy interest under the provisions of section 201(1A) of the Act, even in the case where the person liable to pay the tax has paid the tax on the date due for the payment of the tax, the Revenue would derive undue benefit or advantage by getting interest on the amount of tax which had already been paid on the due date. Such a position, in our opinion, cannot be permitted.

13. In view of the aforesaid reasons, we answer the question in the affirmative i.e. in favour of the assessee and against the Revenue. The Reference is thus

answered accordingly and is disposed of with no order as to costs.

Sd/- Sd/-
(A.R.Dave,J) (D.A.Mehta,J)

m.m.bhatt